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COMMITTEE AGAINST TORTURE

Twentieth session

SUMMARY RECORD OF THE 324th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 7 May 1998, at 10 a.m.

Chairman: Mr. BURNS

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Second periodic report of Guatemala (CAT/C/29/Add.3)

1. At the invitation of the Chairman, Mr. Padilla Menéndez, Mr. Alonso, Ms. Rodríguez de Fankhauser and Ms. Villacorta (Guatemala) took places at the Committee table.

2. The CHAIRMAN welcomed the Guatemalan delegation and invited it to present its country's report.

3. Mr. PADILLA MENÉNDEZ (Guatemala), briefly reviewing the overall human rights situation in his country, emphasized the Government's political will to pursue its efforts, efforts that would be made within the context of the ongoing peace process and the implementation of several agreements negotiated since 1986 which had led to the signing of the Agreement on a Firm and Lasting Peace on 29 December 1996. The United Nations Human Rights Verification Mission in Guatemala (MINUGUA), established in 1994, had been present in the country since that time and continued to monitor the implementation of the agreements. The process had moved ahead well enough for the United Nations Commission on Human Rights to decide by consensus, in April 1998, to end its consideration of the human rights situation in Guatemala. Obviously, that did not mean that the problems no longer existed or that there was no more abuse of authority. After 30 years of armed conflict, Guatemala needed to restructure the police force and punish those who had violated human rights, even though one of the peace agreements had provided for amnesty and national reconciliation. The Commission responsible for shedding light on human rights violations committed over the past 30 years, similar to the truth commissions set up in such countries as Chile and South Africa, was chaired by a German expert, Mr. Tomuschat, and consisted of eminent Guatemalan lawyers. It had been obliged to have its mandate extended by six months because it had not finished its work. Owing to the policy of national reconciliation, the Commission's work would not lead to court proceedings. The situation had not yet returned to normal, as evidenced by the tragic murder of Monsignor Gerardi, coordinator of a Catholic Church project with aims similar to the Commission's. The recent murder seemed to be tied in with those activities and the Government was committed to finding the guilty, bringing them to justice and punishing them in accordance with the law. To that end, it had set up a top-level commission.

4. In view of the time that had elapsed since the signing of the peace agreements, the fact that former guerrilla leaders had returned to the country to lead a normal life, and that the former Guatemalan National Revolutionary United Front (URNG) had become an opposition political party that would be participating in the June 1998 municipal elections, it could be said that the human rights situation had improved remarkably in Guatemala, in spite of the tragic event he had mentioned, one which, it was hoped, would not unleash a new wave of violence.

5. Mr. ALONSO (Executive Director of the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights, Guatemala) spoke of Guatemala's efforts and problems in implementing the Convention, to which the President and the Guatemalan people were particularly attached, after experiencing 36 years of internal armed conflict. Guatemala had come to a turning point in its history and the Government stood ready to consolidate the progress achieved, especially in regard to human rights.

6. At its fifty-fourth session, in April 1998, the United Nations Commission on Human Rights had decided to end its consideration of the human rights situation in Guatemala, something the Government had taken as recognition of its efforts and a mark of solidarity on the part of the international community. Furthermore, the Sub-Commission on Prevention of Discrimination and Protection of Minorities had taken a similar decision at its forty-ninth session, in August 1997. Those two decisions were encouraging for Guatemala, which had embarked on political, economic and social development and multicultural and multilingual progress.

7. However, Guatemala was aware that it was still being closely watched by human rights treaty monitoring bodies as well as by MINUGUA, and reaffirmed its will to redouble its efforts to ensure that its human rights practices measured up to international standards. As to the Convention against Torture, the presentation of periodic reports to the Committee afforded an opportunity to take note of the progress achieved. An unnumbered supplement to the periodic report (CAT/C/29/Add.3) would be circulated to the members of the Committee. It contained important information on the period from 1 January 1997 to 31 March 1998, further to the observations made by the Committee in its conclusions and recommendations on Guatemala's initial report. The paper highlighted the progress made in the peace process. The agreements on social development had been translated into a national plan of action for which the Government would provide all its infrastructure and human resources. The implementation timetable set out in the peace agreements had been divided into three phases, extending from January 1997 to the year 2000, and laid down guidelines for fulfilling the 179 commitments made under the agreements. The United Nations Secretary-General had also prepared a report in February 1998 on the implementation of the peace agreements in Guatemala. During the first phase a number of bodies had been created: the Commission on Electoral Reform, the Joint Commission on Educational Reform, the Commission on the Strengthening of the Justice System, the Joint Commission on Indigenous Languages, and so on. On 3 May 1997, the former URNG combatants had been demobilized under the auspices of the United Nations. To date, all of the bodies set up under the peace agreements had functioned satisfactorily, and all 18 commissions had met on 23 April 1998 to assess the progress achieved and to prepare the report now being made available to the Committee.

8. The second part of the additional report concerned the situation regarding the armed forces. In accordance with the peace agreements and especially the Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society, a plan for institutional restructuring had been put into operation in 1997. As MINUGUA had been able to verify, the Ministry of Defence had managed to cut military personnel by 37.35 per cent, i.e. more than the 33 per cent set in the agreement. During the President's term of office which had begun in January 1996,

between 250 and 300 changes had been made in the higher ranks of the armed forces throughout the country; 80 per cent of the senior officer posts had been reassigned, three generals had been retired and seven placed on the reserve list. The aim of the changes had been to adapt the armed forces to their new role in a context of peace, reconciliation and democracy. In June 1997, a draft reform of the Constitution had been submitted to Congress. The reform, which would assign the Guatemalan army the exclusive role of defending the State's sovereignty and the country's territorial integrity, was still being examined by the legislative bodies.

9. The Voluntary Civil Defence Committees and the "military commissioners" had been done away with and the demobilization of some 200,000 volunteers, started in June 1996, and completed in December 1997, i.e. ahead of the agreed date, was a step taken in keeping with the recommendations of the United Nations Commission on Human Rights and the commitments made by the Government within the framework of the Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society. Congress had begun to examine a bill on weapons and munitions presented by the Ministry of the Interior, incorporating the recommendations of the Follow-up Commission on Compliance with the Peace Agreements. The Ministry had also begun preparations to transfer the Weapons and Munitions Department, which come under the Army, to the Ministry of the Interior. Experts in various fields, including doctors, lawyers and psychologists, would prepare compulsory theoretical and practical examinations and psychological tests for persons who wanted to own a firearm. Congress had amended the Weapons and Ammunition Bill so as to prohibit the bearing of arms by persons under 25 years of age.

10. Both the Ministry of the Interior and the Ministry of Defence were concerned in the measures to fight against impunity. The Ministry of the Interior had undertaken an assessment of its own departments and had started to purge the security forces. As a result, in 1997 alone 168 police officers, mostly from the middle ranks, had been dismissed for committing illegal acts. In April 1998, the Police Commissioner had taken eight police officers to court for drinking alcohol while on duty. The National Police Academy had now become highly selective in recruitment. Officers who had been readmitted into the police force were being closely investigated to determine whether they had participated in illegal activities and if they were fit to perform their duties. All applicants for jobs in the National Police had to have a clean record and training at the Police Academy, where courses included training in human rights and, in particular, United Nations rules in that area. Since 1996, the Ministry of Defence, under a presidential order, had been purging the top levels of the defence hierarchy and some persons had been brought before the courts.

11. The security forces were now required to show moderation in the use of force, especially when evicting illegal land occupants. The National Police had been ordered to act within the strict confines of the law, and those operations and other measures requiring police intervention would take place in the presence of MINUGUA observers and representatives of the Offices of the Procurator for Human Rights and of the Public Prosecutor.

12. As to the strengthening of national bodies for the promotion and protection and human rights, in 1998 the budget for the Office of the

Procurator for Human Rights had been increased by 10 per cent over the 1997 budget and the allocations for the judiciary had also risen significantly. On 5 December 1997, the law establishing the Public Criminal Defence Service had been enacted. Since October 1997, a jurist, formerly the deputy human rights procurator, had been head of the Judicial Training School, and everything was being done to improve the level and training of judges, magistrates and public defenders. The Office of the Procurator for Children and Young People had been restructured in conformity with the Code on Children and Young People, which would enter into effect on 27 September 1998. A laboratory for testing drugs and psychotropic substances had been opened and there were more and more centres offering assistance to addicts.

13. As to a more professional corps of law enforcement officials, Congress, in Decree No. 11-97, had set up the National Civil Police to replace the traditional National Police. In August 1997, the Commission on the Strengthening of the Justice System had submitted to Congress and the Peace Secretariat its proposals for constitutional reform of the justice system as well as its opinion on the law concerning the Public Criminal Defence Office and changes to the Code of Criminal Procedure. Furthermore, the Guatemalan authorities were determined to improve coordination between the various actors within the justice system, in accordance with MINUGUA's recommendations in its second report. The President of the Supreme Court, the Procurator-General of the Nation and the Minister of the Interior had, in September 1997, signed a letter of intent concerning coordinated reform and modernization of the institutions they headed and, for that purpose, had set up a coordinating body. With the aid of the European Union, a computer network would be installed and would link up three bodies dealing with children: the Office of the Human Rights Procurator, the Public Prosecutor's Office and the Juvenile Court.

14. As far as the protection of witnesses, judges and prosecutors was concerned, the Service for the Protection of Witnesses and Persons Involved in the Administration of Justice had been set up in March 1996. Two years later, the Public Prosecutor's Office had asked to be allocated funds of its own so as to function effectively. Only a week ago, the authorities had revealed that six judges who had received threats were now being protected by the Public Prosecutor's Office and the National Police. In accordance with the peace agreements, the Military Code and the military courts were being reformed.

15. Furthermore, the Guatemalan authorities had started a war on poverty based on three strategies: emergency programmes for certain target groups, financed by social funds; institutional and structural reform; and a shift in policy in sectors directly linked to the fight against poverty, with better use of public funds. In 1997, social funds had helped to get specific important activities off the ground. For example, the Guatemalan Fund for Indigenous Development (FODIGUA) had carried out 134 social projects at a cost of about US$ 3 million, benefiting 40,379 persons. The National Fund for Peace (FONAPAZ) had helped populations living in the poorest and most remote areas of the country. In collaboration with other bodies, it had established a centre for the administration of justice in Santa María Nejab, in the department of El Quiché, where the population was predominantly indigenous. As the centre had been well received, it was planned to set up five more,

because they were an excellent way of giving the population in remote areas access to the justice system, thereby facilitating the settlement of disputes. The Fund had made it possible to build reception centres for the demobilized members of the Guatemalan National Revolutionary United Front and to set up a special programme of assistance to communities of displaced persons. The Guatemalan Housing Fund (FOGUAVI) had financed the building of housing and the Social Investment Fund (FIS) had introduced 1,976 projects to assist the needy. On 4 June 1997, the Presidential Department for Legal Assistance and the Settlement of Land Disputes (CONTIERRA) had been created with the prime objective of facilitating mediation in land ownership disputes.

16. The entry into force of Decree No. 58-95, making torture an offence, was an important factor in the campaign against torture. In its sixth report, MINUGUA had noted the considerable drop in the number of admissible complaints and verified cases of torture, pointing out that it had marked an improvement in the right to integrity and security of person. In its subsequent report, covering the first half of 1997, MINUGUA said it had received nine complaints of torture, only two of which had been declared admissible and only one had been verified. The members of the Committee had at their disposal the annex to the report of the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights, which showed the figures given in the MINUGUA reports on cases of torture and other cruel, inhuman or degrading treatment. The Guatemalan delegation stood ready to answer any request for additional information from the members of the Committee.

17. Mr. GONZALEZ POBLETE (Country Rapporteur) thanked the Guatemalan delegation for its detailed introduction, all the more useful as 20 months had elapsed between the written report and the oral presentation to the Committee. Guatemala had acceded to the Convention against Torture in 1990 but had not made the declarations provided for under articles 21 and 22. Guatemala was also party to the Inter-American Convention to Prevent and Punish Torture. The situation in Guatemala should be considered in the light of the long armed conflict the country had experienced and the efforts the authorities were making to build a democratic State in cooperation with the international community. In that respect, the MINUGUA reports and those of the Special Rapporteur of the Commission on Human Rights had been very instructive.

18. The Guatemalan Government itself recognized that there was still a lot left to do. Paragraph 14 of the report frankly stated that, as far as citizens' security was concerned, the initiatives taken previously had been insufficient and citizens did not have any confidence in the bodies entrusted with guaranteeing their safety. Even when the initial report had been considered, the Committee had noted that the action of the democratic civilian Government had been hindered by a deeply entrenched military and police culture. The judicial system was still suffering from quantitative and qualitative inadequacies and the Guatemalan Government was clearly aware of the serious consequences. With reference to the administration of justice, paragraph 16 of the report said it was clear that there was an urgent need for improvement. Paragraphs 44 to 51 mentioned a large number of initiatives to train prosecutors, judges and police officers and paragraphs 52 to 58 showed the means and material resources available to procurators, judges and the national police to secure greater respect for the law. Undoubtedly, some progress had been made, but as MINUGUA had pointed out in its seventh report,

the judicial system still did not make for proper administration of justice and respect for human rights. Impunity was still one of the main problems. The training programmes for judges and courses to recruit new judges were therefore particularly welcome. The report on the evolution of the situation of human rights in Guatemala in the light of the implementation of the peace agreements (E/CN.4/1998/93), prepared in early 1998 by the members of the Secretary-General's mission to Guatemala, gave a good idea of the true situation and of the Government's endeavours.

19. With specific reference to the rights protected under the Convention, the State party said in its report (para. 25) that the figures revealed a decline in the number of reports of torture in the strictest sense, but during the period in question complaints of cruel, inhuman or degrading treatment committed by agents of the State had still been received. It would be useful to have details about such cruel, inhuman or degrading treatment and about the kind of follow-up to the complaints of torture. In the cases reported, had the Public Prosecutor's Office initiated proceedings against the torturers and had they been punished by the courts? Paragraph 26 went on to say that MINUGUA, in its fifth report to the Secretary-General, stated that only four complaints were received in the period in question, only two violations had been verified and neither had been substantiated. In MINUGUA's sixth report, covering the second half of 1996, it was stated that three complaints of torture had been received, 13 violations had been verified and two violations had been substantiated. However, although the incidence of torture had improved between MINUGUA's fourth and sixth reports, the seventh report seemed to indicate some regression. It would be interesting to see whether that would be confirmed in MINUGUA's next report.

20. Close attention should be paid to the way in which acts were characterized. Paragraph 25 of the Government's report mentioned cruel, inhuman or degrading treatment as having been committed chiefly by agents of the State. MINUGUA's reports, in the section "Right to integrity and security of person", included five types of violation: torture; cruel, inhuman or degrading treatment; ill-treatment; excessive use of force; and other threats. Two of those violations - ill-treatment and excessive use of force - seemed to fall under article 16 of the Convention. For the other types of violation of the Convention, the figures given in the fourth, fifth and sixth MINUGUA reports, for 1995 and 1996 respectively, were 20 and 12 for cruel, inhuman or degrading treatment, 59 and 59 for ill-treatment and 14 and 113 for the excessive use of force, i.e. a total of 93 violations in 1995 and 184 in 1996. Those figures went to explain paragraph 170 of MINUGUA's fifth report, mentioned in paragraph 30 of the country report. As recognized in the same paragraph, the problem was the result of the State's weakness. The State should, in keeping with its commitment, fully guarantee protection of the population and bring to justice State agents responsible for those offences.

21. In its 1997 report, Amnesty International had cited three cases of torture in 1996 and, according to Human Rights Watch, there had been no case of torture in 1997. However, both organizations had reported cases which revealed the precarious human rights situation in Guatemala: increased criminal violence, continued impunity, frequent cases of intimidation, including death threats against judges, prosecutors, witnesses, journalists,

relatives of victims and human rights defenders, continued abductions and extrajudicial executions, activities by so-called self-defence groups, and killings of street children by the security forces.

22. The fate of the street children illustrated only too well the systematic violation of human rights in Guatemala. Human Rights Watch and the Casa Alianza association had condemned the treatment suffered by those children, who, depending on the sources, numbered from 1,500 to 5,000, the majority of them living in the capital. Between 1990 and 1995, 14 of them were said to have been murdered or to have succumbed to acts of torture and 45 had been victims of torture which had not resulted in death. Over the years 1996-1997, 14 had been killed and 8 others had survived acts of torture. While it was not possible to impute these crimes to public officials owing to the fact that the perpetrators had never been identified, the State could be criticized for not undertaking an impartial inquiry into those cases. According to the Human Rights Watch report, the Public Prosecutor's Office had justified its lack of response by passing the blame onto the families. That situation called for clarification. However, in late 1996 and early 1997, three heavy sentences had been handed down against child murderers and, in one case, against their accomplices as well.

23. Within that rather sombre context, a number of important decisions and encouraging developments pointed to a real political will to respect and ensure respect for human rights. Thus, the disbanding of the "military commissioners" represented a strengthening of civilian authority. The Voluntary Civil Defence Committees had begun to be dissolved but, as pointed out by MINUGUA in its sixth report, it was disturbing that some members of those Committees were still in possession of their weapons, which could mean that they were involved in criminal activities and were members of illegal armed groups.

24. The changes in the Code of Criminal Procedure sought to improve the administration of justice. However, while the prohibition on alternative penalties in certain circumstances reflected a commendable will to punish severely certain offences, the possibility of violation of the principles of presumption of innocence and of the exceptional nature of pre-trial detention was disturbing. Furthermore, the very high number of detainees awaiting trial, accounting for 75 per cent of the prison population, could rise even further. It was gratifying to see that the jurisdiction of the military courts was confined to military offences, in which connection he would like to know what the effects were of transferring 400 ordinary law cases against armed forces personnel from the military courts to the ordinary courts.

25. In the context of the purge of the National Police and the Financial Police, he asked which "authorities" the police officers suspected of corruption had been handed over to and, generally, what the outcome had been. During the consideration of Guatemala's initial report, the Committee had been sorry to find that the right to bear arms was written into the Constitution. The adoption of Decree No. 63-96 which banned the bearing of arms by persons under 25 years of age except for active members of the armed and civil security forces was therefore welcome. However, in view of the high number

of illegal weapons in the possession of individuals (estimates ranged from 250,000 and 550,000 weapons), which could lead to a resurgence in violence, it would be useful to evaluate the real effects of the ban on carrying weapons.

26. Paragraph 59 of the report spoke of the formation of a special police brigade to provide witnesses, judges and prosecutors with a measure of protection from threats or intimidation, as well as the establishment under Decree No. 70-96 of the Service for the Protection of Persons involved in Proceedings connected with the Administration of Justice. It was an important initiative and it would be useful to learn in detail about its activities and impact. Other positive initiatives included the law on the National Police and the opening of the Police Academy, which should make for a more professional police corps. The disbanding of the mobile military police had been completed in December 1997 and, to complete the process of restructuring the security forces into one single non-military nationwide police, the only thing still to be done was to dissolve the Financial Police. He wondered when that in fact would be done.

27. In its consideration of the initial report, the Committee had recommended strengthening the activities of the Office of the Procurator for Human Rights. The 10 per cent increase in the Office's budget for 1998 was a welcome move, but only 20 per cent of the entire budget was for actual operations. The remainder was allocated for the payroll.

28. It was regrettable that, despite the recommendation made during the consideration of the initial report, the State party had still not made the declaration under article 22 of the Convention against Torture and he wondered what the Government's intentions were in that regard. Lastly, he noted that Guatemala was gradually catching up on the schedule for the submission of reports and he urged it to keep to the schedule as far as possible, for the situation was changing very rapidly in Guatemala.

29. Mr. SORENSEN (Alternate Country Rapporteur) said he, too, thanked the Guatemalan delegation for its oral presentation. It was a pity that the report did not reflect the present situation, as it had been prepared over a year ago, and it did not refer to the Convention article by article.

30. It seemed impossible for article 2 of the Convention to be implemented in view of the provisions of article 201.A of the Penal Code. Explanations in that regard would be welcome. Article 201.A defined torture as an act performed on the orders of a superior. The Committee would like to know whether it was enough not to obey an order for the person concerned not to be considered a torturer. Furthermore, under Guatemalan law, torture could take place only in the context of a kidnapping. Would that mean that acts of torture performed in police stations and in military barracks were not subject to the law? He wanted clarifications because all those exceptions could have contributed to the recent fall in the number of cases of torture.

31. As to the situation in prisons, what was the exact number of prisoners in the country, what was the prison capacity, was there a problem of overcrowding - often synonymous with ill-treatment - and what was the proportion between the number of prisoners sentenced and those awaiting trial? Available information indicated that 75 per cent of detainees were in

pre-trial detention, which could lead to a profound loss of confidence in the judicial system, if that was not already the case. All the necessary measures should therefore be taken to speed up judicial procedures. Personally, he was convinced that a higher number of prison sentences would never solve the problem of a high crime rate. Efforts had indeed been made in regard to the training of judges, but the Committee would like additional information on specific measures to guarantee their independence and impartiality. Further information on the training of prison and health personnel would also be appreciated.

32. With reference to article 11 of the Convention, was there a system for inspecting police stations and prisons and were the findings published in reports?

33. As to the implementation of article 14, Guatemala was duty bound to ensure that victims had the right to redress and to fair and adequate compensation, including the means for as full rehabilitation as possible. That obligation was absolutely indispensable for a country like Guatemala, where repression had, over 36 years, taken hundreds of thousands of victims. The establishment of a stable democratic regime in the country would depend on the way in which the Government helped the victims to readjust to living in the society. What forms did the measures of redress offered by the Government take, had impunity been sufficiently studied and how was the rehabilitation of victims ensured? He suggested that the Guatemalan authorities could make a contribution, if only a token one, to the United Nations Voluntary Fund for Victims of Torture, and pointed out that the General Assembly had, in resolution 52/149, designated 26 June as United Nations International Day in Support of Victims of Torture.

34. Mr. MAVROMMATIS said he acknowledged Guatemala's evident political will to improve the human rights situation. The authorities were undoubtedly on the right track even though progress seemed somewhat slow. Priority should be placed on developing a human rights culture and making every citizen aware of his rights and obligations. Regrettably, Guatemala's report was confined to generalities and therefore did not provide Committee members with the requisite information for fruitful dialogue. He drew the delegation's attention to the existence of training courses on reporting, organized by the United Nations Centre for Human Rights.

35. Since the judiciary constituted the pillar of human rights protection, he asked how the independence, immunity and irremovability of judges were guaranteed.

36. As to the definition of torture, why had the Guatemalan Parliament not used the definition contained in article 1 of the Convention instead of improvising an incomplete definition? Generally speaking, he was not in favour of amnesties. However, where they did exist, they must be accompanied by an independent inquiry into the causes of the acts pardoned and must never eliminate the right of appeal.

37. Mr. CAMARA said he, too, appreciated the obvious desire of the Guatemalan authorities to institute the rule of law. He would like further clarification regarding paragraph 31 of the report, which stated that the

Penal Code had been amended to define extrajudicial executions, enforced disappearances and torture as offences. In French at least, "offences" (délits) and "crimes" (crimes) were not synonymous terms, and the acts in question should definitely be regarded as crimes.

38. As to the disbanding and the demobilization of 24,400 "military commissioners" (paragraph 32 of the report), he asked whether all the necessary measures had been taken to make sure that the former military commissioners - perpetrators of human rights violations - could no longer do any harm.

39. The CHAIRMAN thanked the delegation for its attention and invited it to answer the Committee's questions at the next meeting.

40. The Guatemalan delegation withdrew.

The meeting rose at 12.35 p.m.